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IN THE HONRABLE HIGH COURT OF JUDICATURE AT BILASPUR

CRI. A. No:- 341/2002

Appealant:- Mahangoo s/o Gandarai Lohar
(In jail) aged- 50 yrs. R/o village - Chhirwani P.S. Chakradhar Nagar, distt- Raigarh.

(1294) Filed on 21-3-02 by Shri A.Dhar Dubey Advocate

R. to D.R. (J)

VERSUS

Respondant:- State of M.P.

Appeal under section – 374 of code of Cri. Pro. Code.

CONVICTION SENTENCE

(30) A.F.R.

HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr. Appeal No. 341/2002

Mahangu

Vs.

State of M.P. (Now Chhattisgarh)

JUDGMENT FOR CONSIDERATION

Sd/-
Dilip Raosaheb Deshmukh
Judge
06-09-2005

HON'BLE SHRI JUSTICE L.C.BHADOO

I agree

Sd/-
L.C.BHADOO
Judge
6/9-09-2005

Post for 09-09-2005

Sd/-
DILIP RAOSAHEB DESHMUKH
Judge

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal No. 341/2002

Mahangu

Vs.

State of M.P. (Now Chhattisgarh)

Coram :- HON'BLE SHRI JUSTICE L.C.BHADOO &

HON'BLE SHRI JUSTICE DILIP RAOSAHEB DESHMUKH, JJ

Shri Abhay Tiwari, Counsel for the appellant.
Shri J.D.Bajpai, Govt. Advocate/Additional Public Prosecutor with Shri Devesh Verma, Panel Lawyer for the State.

(The following Judgment is delivered on 09-09-2005)

Per Dilip Raosaheb Deshmukh, J.

01. This appeal is directed against the judgment dated 19-02-2002 delivered by Shri Majhar Ali, IIIrd Additional Sessions Judge (Fast Track Court), Raigarh in Sessions Trial No. 72/2000 whereby Mahangu was convicted under section-302 of the I.P.C. for committing murder of Sadhram and was sentenced to imprisonment for life.

02. The factual Matrix is as under. On 02-01-2000 at about 6 P.M. one Murli Kewat was taking to Laxman Prasad S/o Sadhram. Co-accused Suresh came there and asked as to why he was speaking to outsiders and pulled Murli. Murli shouted. Co-accused Vijay, Fagnu and the appellant came running whereupon Murli somehow got himself released and ran to the house of Sadhram. Appellant Mahangu accompanied with co-accused Fagnu, Suresh and Vijay went to the house of Sadhram where Sadhram advised them not to indulge in a quarrel. Upon this, co-accused Vijay,

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Suresh and Fagnu got hold of Sadhram and appellant Mahangu picked up a wooden *Pati* and dealt a single blow on the head of Sadhram whereupon Sadhram fell unconscious. Sadhram succumbed to the head injury at night. Laxman PW-3 and Murlidhar PW-4 saw the assault on Sadhram by appellant Mahangu. Laxman PW-3 lodged F.I.R. Ex.P-4 and Marg Intimation Ex.P-3 on dated 03-01-2000 at Police Station-Chakradhar Nagar. The Station House Officer, P.S.-Chakradhar Nagar, H.C.Gotia, PW-10 reached the place of occurrence and prepared inquest memo vide Ex.P-8 and sent the body of the deceased for postmortem to the District Hospital. Dr. Sharad Awasthi, PW-2 conducted the autopsy and found one ante-mortem lacerated wound 2 ½ "x 2" bone deep in Mid parietal scalp with abnormal mobility of surrounding underlying bones and blood clots present. Upon dissection, he found that there was compound communited depressed fracture of both the parietal bones corresponding to the lacerated wound in an area of 4 ½" x 3 ½" with subcutaneous haematoma present and extensive intracerebral haemorrhage found in both the parietal lobes. He opined that cause of death was intracerebral haemorrhage leading to shock and coma. One wooden *Pati* was seized from Laxman on dated 03-01-2000 vide Ex.P-5 and one white Terricot shirt was seized from the appellant Mahangu vide Ex.P-12. Presence of blood on the wooden *Pati* was confirmed by the Forensic Science Laboratory, Raipur vide Report dated 28-04-2000. One button which was found in the right palm of the deceased was seized vide Ex.P-11. The shirt of the appellant with the missing button was also seized vide Ex.P-12. Upon examination, the Forensic Science Laboratory opined vide Ex.P-15 that the buttons were identical. After completion of investigation, the appellant was prosecuted along with other co-accused Fagnu, Suresh and Vijay for committing murder of Sadhram under section-302 read with section-34 of the I.P.C.

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03. The appellant Mahangu abjured the guilt. The prosecution examined as many as 10 witnesses in the case. No evidence in defence was adduced by appellant. The trial Court relying upon the ocular testimony of Laxman PW-3 and the medical evidence of Dr. Sharad Awasthi, PW-2 as also the circumstance of the seizure of the button of the shirt of the appellant Mahangu from the body of the deceased convicted the appellant for committing murder of Sadhram under section-302 of the I.P.C. and sentenced him as aforesaid. As regards co-accused Fagnu, Suresh and Vijay, they were acquitted.

04. Shri Abhay Tiwari, learned counsel for the appellant has argued that the appellant had no intention of causing the death of Sadhram as there was a quarrel with Murli S/o Sadhram and while the appellant ran to the house of Murli, the deceased intervened as a result of which in a sudden heat of passion, the appellant who was un-armed picked up a wooden *Pati* and dealt a single blow on the head of Sadhram. Thus, the evidence led by the prosecution clearly showed that the act was committed by the appellant in a sudden heat of passion without pre-meditation or deliberation. Learned counsel for the appellant, therefore contended that the offence committed by the appellant would not travel beyond section-304 Part-II of the I.P.C. since at the most knowledge that striking a blow on the head of Sadhram by the wooden *Pati* would cause the death of Sadhram could alone be attributed to the appellant. On the other hand, learned counsel for the State has supported the judgment of the Trial Court.

05. We have heard rival contentions and also perused the record. Murlidhar PW-4 did not support the prosecution story and only stated that he saw that the appellant and

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other co-accused were quarreling with Sadhram. Gautam PW-6 has narrated that he had seen that Sadhram had fallen to the ground and blood was oozing from his head. Gurbari PW-7 and Prem Sai PW-8 also did not support the prosecution story. Laxman PW-3 has deposed that he saw that the appellant and 3 co-accused had entered the house of Sadhram. The co-accused Suresh and Vijay had caught hold of his elder brother Prem Sai. At this point of time, Mahangu came with a wooden *Pati* and dealt one blow on the head of Sadhram with the Wooden *Pati,* as a result of which Sadhram fell unconscious. So far as the single blow caused by the wooden *Pati* by the appellant Mahangu on Sadhram is concerned, the testimony of this witness has stood the test of cross-examination. It is also corroborated by the F.I.R. vide Ex.P-4 lodged promptly by this witness. It is further corroborated by the testimony of Dr. Sharad Awasthi, PW-2 who has deposed about the external and internal injuries sustained by Sadhram and the cause of his death as narrated in paragraph-2 above. It is also established by the testimony of Harihar PW-9 that one shirt was seized from the appellant Mahangu vide Ex.P-12 in which one button was missing and that the Police had seized one button from the right hand of the deceased vide Ex.P-11. Investigating Officer H.C.Gotia PW-10 has also proved the report Ex.P-10 of the Forensic Science Laboratory, Sagar which shows that both the buttons were found to be identical. In our considered opinion learned trial Court has rightly relied upon the ocular testimony of Laxman PW-3 and the medical evidence of Dr. Sharad Awasthi PW-2 as well as the circumstance of seizure of the shirt worn by the appellant Mahangu with a missing button and the seizure of a button from the right hand of the deceased and upon proper appreciation of evidence has given a finding that the appellant Mahangu had caused the death of Sadhram by assaulting him once on the head by a wooden *Pati.*

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06. The only question which remains to be considered by us is that as what offence was committed by the appellant Mahangu. As the evidence of Laxman PW-3 shows that the quarrel had initially begun between the appellant and Murli. The appellant had caught hold of Murli who somehow got released and ran away whereupon the appellant was quarreling with Prem Sai, the elder brother of Laxman. Thus, it is clear that up to this moment the appellant was a lot agitated. In such circumstance, the appellant who was unarmed brought a wooden *pati* and dealt one single blow on the head of Sadhram and ran away. From the facts and circumstances appearing in evidence it is clear that there was no pre-meditation or deliberation by the appellant to kill Sadhram. It was in a sudden heat of passion that the appellant suddenly picked up the wooden *pati* and dealt a single blow on the head of Sadhram. There was no pre-meditation or deliberation to kill Sadhram. The incident happened all of a sudden when the temper was fully aroused. Therefore, in our considered opinion the requisite intention for causing the death of Sadhram could not be attributed to the appellant in the facts and circumstances of this case. In the case of ***Mahesh Vs. State of Madhya Pradesh (1996) Volume-10 S.C.C. Page No.668,*** it was held by the Hon'ble Apex Court that where in a sudden quarrel after the deceased had objected to grazing of cattle, the appellant dealt a single blow with Farsa on the head of the deceased, Exception-4 to section-300 of the I.P.C. is attracted and conviction under section-304 Part-I of the I.P.C. was proper. Sentence of 6 years Rigorous Imprisonment and fine of Rs.1,000/- was awarded. In case of ***Swaroop Singh & Gyani Vs. State of Hariyana A.I.R.-1995-S.C.-2542,*** where the appellant had dealt a single blow with hammer on the head of the deceased which is vital part of the body. It was held that the accused had knowledge, though no intention, that injury was likely to cause death and therefore, the offence would squarely fall

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under section-304 Part-II of the I.P.C. Applying the law laid down by the Hon'ble Apex Court to the facts and circumstances of the present case, we have no hesitation in coming to the conclusion that the act of the appellant falls squarely under section-304 Part-II of the I.P.C. and sentence of rigorous imprisonment for 7 years would be sufficient to meet the ends of justice.

07. In the result, the appeal is partly allowed. The appellant is acquitted of the charge under section-302 of the I.P.C. and is instead convicted under section-304 Part-II of the I.P.C. The appellant is sentenced to rigorous imprisonment for 7 years. The appellant is in jail since 04-01-2000. Custodial sentence already undergone shall be set off under section-428 of the Cr.P.C against the sentence awarded.

Sd/-
L.C.BHADOO
Judge

Sd/-
DILIP RAOSAHEB DESHMUKH
Judge

Satish